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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 MASS, 3/F
425 I Street, N.W.
Washington, D.C. 20536

[REDACTED]

File: [REDACTED] Office: VERMONT SERVICE CENTER

Date: SEP 30 2003

IN RE: Petitioner:
Beneficiary:

[REDACTED]

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[REDACTED]

PUBLIC COPY

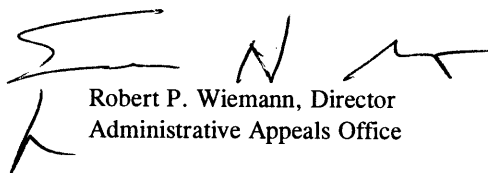
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a mosque, seeking classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), in order to employ him as an imam and religious teacher at a weekly salary of \$400 plus housing.

The director denied the petition, finding that the petitioner failed to establish that the proffered position was a qualifying religious occupation, that the beneficiary was qualified for the petition, or that the beneficiary had been continuously carrying on a religious occupation for at least the two years preceding the filing of the petition. The director further denied the petition, finding that the petitioner failed to establish that it had the ability to pay the proffered wage.

On appeal, counsel for the petitioner asserts that the director incorrectly interpreted the position of Imam and the beneficiary's qualifications for the position.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner is a mosque that was established in 1998. The petitioner claims to have 134 members. The beneficiary is a 46-year old native and citizen of Pakistan. The petitioner indicated on the Form I-360 petition that the beneficiary entered the United States on January 5, 1993 as a B-2 nonimmigrant visitor for pleasure.

The first issue to be addressed in this proceeding is whether the petitioner established that the proffered position is a qualifying religious occupation.

8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

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(C) That, if the alien is a religious professional, he or she has at least a United States baccalaureate or its foreign equivalent required for entry into the religious profession. In all professional cases, an official academic record showing that the alien has the required degree must be submitted.

(D) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or

occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother, or that the type of work to be done relates to a traditional religious function.

8 C.F.R. § 204.5(m)(2) states, in pertinent part, that:

Professional capacity means an activity in a religious vocation or occupation for which the minimum of a United States baccalaureate degree or a foreign equivalent degree is required.

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in the regulations. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function.

The petitioner describes the beneficiary's job duties as follows:

[The beneficiary] will offer prayers five times a day and also perform Juma (Friday) prayer. [The beneficiary] will also be responsible for the supervision of the Mosque and offer funeral prayer also [the beneficiary] will also take weekly class to teach Quran to kids.

[Sic.]

The director determined that the petitioner failed to

establish that the beneficiary's primary duties require specific religious training beyond that of a dedicated and caring member of the congregation or body, or that the duties are traditional religious functions above those performed routinely by other members.

On appeal, counsel for the petitioner asserts that "the Imam is not an ordinary person to be picked up to lead the prayers. Instead, he is a person who has obtained education and training for several years to understand comprehensively the teachings and right interpretations of Quran."

In review, the petitioner has established that the position involves activities relating to traditional religious functions, but failed to establish that the position has been traditionally a full-time salaried position within the petitioning organization. The petitioner failed to overcome the director's objection to approving the petition.

The next issue to be addressed in this proceeding is whether the beneficiary had been continuously carrying on a religious occupation for the two years preceding the filing of the petition.

8 C.F.R. § 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on April 30, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least April 30, 1999.

The petitioner submitted a letter from the Director of the Muslim Center of New York stating that:

[The beneficiary] is an A'lim, Islamic Scholar, Qari and Hafiz-e-Quran. (He has memorized the entire Holy Quran and has learnt the science of reciting correctly the Quran.) He has taught

Muslim Students how to read the Quran correctly.

[The beneficiary] had been teaching Quran Nazira and Tajweed (reading and reciting the Holy Quran correctly) at Muslim center for two years from September 1998 to October 2000. He also led the congregational Prayers in the absence of our regular Imam.

[Sic.]

The petitioner submitted a translated letter and a certificate from the Maddrassa Darul-Uloom Faiz Mohammadi, stating that the beneficiary taught the Quran and led prayers from March 1989 to April 1991.

In review, the evidence is insufficient to establish that the beneficiary was continuously carrying on a religious occupation or vocation during the two-year period immediately preceding the filing of the petition. The petitioner failed to submit evidence concerning the beneficiary's activities from October 2000 until April 30, 2001. The petitioner failed to provide corroborating evidence to show that the beneficiary was paid for his services at the Muslim Center of New York. The petitioner failed to state whether the beneficiary was employed on a full or part-time basis at the Muslim Center of New York.

The statute and its implementing regulations require that a beneficiary had been continuously carrying on the religious occupation specified in the petition for the two years preceding the filing of the petition. Because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, CIS interprets its own regulations to require that, in cases of lay persons seeking to engage in a religious occupation, the prior experience must have been full-time salaried employment in order to qualify.

Here, the letter from the Muslim Center of New York does not state the average amount of time the beneficiary devoted to the mosque and does not indicate that he engaged in this activity as an occupation. On appeal, the petitioner submits a statement signed by 10 individuals that states that the beneficiary has been teaching the Quran to their children for the last three years and has received their contributions as compensation. The

petitioner failed to indicate the amount of time the petitioner spent teaching children and failed to provide sufficient corroborative evidence that he had been paid for his services. The evidence is insufficient to establish that the beneficiary had been continuously carrying on the religious occupation specified in the petition for the two years preceding the filing of the petition.

The third issue raised by the director is whether the petitioner established its ability to pay the proffered wage.

8 C.F.R. § 204.5(g)(2) states, in pertinent part, that:

Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

The petitioner failed to provide evidence of its ability to pay in a format specified by the pertinent regulation. The petitioner instead submitted internally generated financial reports. It is further noted that according to those reports, the petitioner operated at a loss in 1999 and 2000. The petitioner failed to overcome this objection of the director to approving the petition.

Another issue to be addressed in this proceeding is whether the petitioner established that the beneficiary is qualified for the proffered position.

The director determined that the petitioner failed to establish that the beneficiary is qualified for the proffered position of Imam and religious instructor, in part because the petitioner failed to specify the requisite qualifications for the position.

On appeal, counsel for the petitioner states the requisite qualifications for the proffered position. The assertions of counsel do not constitute evidence. *Matter of*

Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Beyond the director's decision, the petitioner failed to establish that it is a qualifying organization. The petitioner merely provided proof that it had applied for federal tax-exempt status. Since the appeal will be dismissed for the reasons stated above, this issue will not be analyzed further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.